

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

MONICA TORRES,

Plaintiff,

v.

Cause No. 2018-CV-0599
JURY TRIAL DEMANDED

TOWN OF BERNALILLO, BERNALILLO
POLICE DEPARTMENT and CHIEF TOM
ROMERO, in his individual and representative
capacity,

Defendants.

DEFENDANTS' RESPONSE TO ORDER TO SHOW CAUSE
(DOCUMENT NO. 27)

COME NOW The Town of Bernalillo Defendants, by and through their counsel of record, and offer the following as their Response to the Order to Show Cause issued by this Court on October 31, 2018.

The Order asks the parties to show cause why this case should not be remanded for lack of subject matter jurisdiction. Defendants assert that federal jurisdiction is the sole source of jurisdiction for the claims contained in Count I of the Complaint for alleged employment discrimination. If the Plaintiff denies that she has asserted claims under federal law, specifically Title VII, then this count must be dismissed in its entirety. This is because, as more fully outlined in the pending Motion To Dismiss, Plaintiff's right to file these charges is dependent on Plaintiff proving that she received a timely notice of non-determination and right to appeal from the EEOC. Plaintiff's right to appeal (file this lawsuit) only exists as to Count I if she has properly followed up on the charges of discrimination she brought before the EEOC under

federal law. *See*, the Exhibits to Defendants' pending Motion To Dismiss, Exhibit 1 (Document 8-1, Charge of Discrimination filed with the EEOC) and Exhibit 2 (Document 8-2, Dismissal and Notice of Rights). Plaintiff has not, to the best knowledge of defense counsel, pursued charges under the New Mexico Human Rights Act and is not authorized by any state administrative proceedings to file an appeal under the New Mexico Human Rights Act.

These facts show that the claims in Count I of the Complaint must be decided by reference to federal law. 28 U.S.C. §2000e-5 empowers the Commission to prevent unlawful employment practices as set forth in section 2000e-2 (defining unlawful employment practices based upon race, color, religion, sex and national origin). Section 2000e-5(b) specifies that the Commission accepts charges of discrimination such as those made by the Plaintiff in this matter. Subsection F(3) provides jurisdiction to each United States district court, and each United States court subject to the jurisdiction of the United States, for actions brought under that subsection. The fact that Plaintiff references claims under State law in the generic description of the relief sought, does not alter the fact that the Plaintiff's legal right to bring these employment claims at all depends upon a determination of whether the Plaintiff has complied with the applicable federal law discussed at length in the pending Motion To Dismiss. Thus, the resolution of Plaintiff's first cause of action necessarily turns on a substantial question of federal law. *Rice v. Office of Service Members' Grp. Life Ins.*, 260 F.3d 1240, 1245 (10th Cir. 2001).

Accordingly, federal court jurisdiction exists until and unless Plaintiff's employment discrimination claims are dismissed. If the Court requires further submissions, counsel for these Defendants will be happy to further explain or clarify the Defendants' position. Counsel for Defendants is also willing to participate in any hearings the Court wants to schedule in these

matters so long as they do not conflict with any matters previously scheduled. At this time, counsel for Defendants could attend a hearing next Thursday (November 8, 2018) or Friday (November 9, 2018).

Respectfully submitted,

LAW OFFICES OF JAMES P. LYLE, P.C.

/s/ James P. Lyle, Attorney

James P. Lyle
Attorney for Bernalillo Defendants
1116 Second Street N.W.
Albuquerque, NM 87102
(505) 843-8000 - Telephone
(505) 843-8043 - Facsimile
pennname@prodigy.net

I hereby certify that a true copy of the foregoing pleading was served upon all counsel of record via CM/ECF filing of this pleading with the United States District Court For the District Of New Mexico this 1st day of November, 2018.

/s/ James P. Lyle, Attorney

James P. Lyle